than the requirement of payment therefor. Freund, Police Power, §§561, 562. It seems difficult, therefore, to understand the ground upon which part of the court held in a recent New York case, that a milk license "could not be revoked in any event without notice to the relator and a hearing," *People* v. *Dept. of Health* (1907) 103 N. Y. Supp. 275, since this jurisdiction has clearly declared a license not to be a vested right of property, *Met. Board* v. *Barrie*, supra, and nothing can be discovered in the form of license required to lend color to an interpretation of it as a contract. Being neither a vested right of property nor the subject of a contract, it should, in the absence of statutory provision, be revocable at will, without notice or a hearing.

APPLICATIONS IN LAW OF THE DOCTRINE OF PAR DELICTUM.—The rule which denies the aid of the courts to parties who by their own acts have placed themselves *in pari delicto*, *Lowry* v. *Bourdieu* (1780) Doug. 451; *Houson* v. *Hancock* (1800) 8 T. R. 575; *Webb* v. *Fulchire* (1843) 40 Am. Dec. 419; *Brown* v. *Brown* (1895) 66 Conn. 493, being founded solely on public policy, the technical rights of the parties before the court are not determinative of the issue. The benefit to the defendant by the court's refusal to act is accidental only, for if the parties were reversed the benefit would inure to the plaintiff. *Holman* v. *Johnson* (1775) Cowp. 341, 343; *Rucker* v. *Wynne* (1859) 2 Head 617. It is conceived that the basic general rule is that where the plaintiff cannot set up his claim without invoking the aid of an illegal transaction, he will be barred. *Simpson* v. *Bloss* (1816) 7 Taunt. 246; *Hinnen* v. *Newman* (1886) 35 Kan. 709; *Grant* v. *Ryan* (1872) 37 Tex. 37, 41. Assuming the subject matter of a contract to be against public policy, three cases may arise: first, the contract may be wholly unperformed; second, it may be wholly performed; third, it may be performed only on the plaintiff's side. It is universally recognized that where the contract is wholly unperformed the courts will apply the general rule and not interfere. *Shay* v. *Wright* (1861) 35 Barb. 236; *Houson* v. *Hancock*, supra. Where the contract is wholly performed there are two exceptions to the general rule: first, where the plaintiff has acted illegally under oppression or duress; second, where the contract is illegal because in violation of a statute passed to protect a particular class of persons of which the plaintiff is a member. The first of these exceptions was established by Lord Mansfield in the case of *Smith* v. *Bromley* (1760) Doug. 670. A similar result had previously been reached in the case of *Bosanquett* v. *Dashwood* (1734) Talbot's Cases 37 (In Equity); though a recovery at law had been denied in *Tompkins* v. *Barnett* (1693) 1 Salk. 22, a case practically overruled by *Clark* v. *Shee* (1774) Cowp. 197. This doctrine has been followed in a long line of English and American cases. *Williams* v. *Bayley* (1866) L. R. 1 H. L. 200; *Turley* v. *Edwards* (1885) 18 Mo. App. 676; *Hinsdill* v. *White* (1861) 34 Vt. 558; *Duval* v. *Wellman* (1891) 124 N. Y. 156. It evidently goes to the root of the doctrine of *par delictum*, for when one party is under duress he cannot be said to be in "equal wrong" with the other. *Hinsdill* v. *White*, supra. What constitutes duress or oppression is somewhat a question of degree, but it seems as if the same con-

siderations as to age, sex, etc., are applied in law as in equity. *Duval* v. *Wellman*, supra; *Turley* v. *Edwards*, supra. The second great exception to the general rule is illustrated by the cases of *Jacques* v. *Golightly* (1776) 2 Black. 1073 and *Browning* v. *Morris* (1778) Cowp. 790. *Duval* v. *Wellman*, supra; *Smart* v. *White* (1882) 73 Me. 332, accord. This exception seems unassailable on principle, for when once it is admitted that a statute is for the protection of the plaintiff, it follows that to apply the general rule and deny a recovery is to defeat the very purpose for which the statute was passed; or looking at it from another point of view, the statute may be said to be a recognition of conditions, the existence of which shows that the parties are not in equal wrong. In the third class of cases where the plaintiff alone has performed it is the commonly accepted doctrine that the plaintiff has a *locus penetentiae* until the defendant performs, and at any time before that may "rescind" the contract and recover in quasi-contract. *Aubert* v. *Walsh* (1810) 3 Taunt. 277; *Hastelow* v. *Jackson* (1828) 8 B. & C. 221; *Spring Co.* v. *Knowlton* (1880) 103 U. S. 49; *Taylor* v. *Bowers* (1876) L. R. 1 Q. B. D. Vol. I, 291; *Morgan* v. *Groff* (1848) 4 Barb. 524; contra, *Yates* v. *Foot* (1814) 12 Johns. 1; *Peck* v. *Burr* (1851) 10 N. Y. 294; *Knowlton* v. *Spring Co.* (1874) 57 N. Y. 519. Although apparently the earliest case at law on this point is *Walker* v. *Chapman* (1773) Loft's Rep. 343, the real origin of the rule may be traced to a dictum of Buller, J., in *Lowry* v. *Bourdieu*, supra. It seems to have been firmly established in the case of *Tappendan* v. *Randall* (1810) 2 B. & P. 467, where the court resting upon this dictum allowed a recovery for money paid by a bankrupt to the defendant's creditor on an illegal bond. The decision could have been reached without invoking the rule in question because the payment was in fraud of the other creditors. The same result had been reached in *Cotton* v. *Thurland* (1793) 5 T. R. 405, which might have been decided on the ground that no illegality was involved in the transaction with the particular defendant. It seems difficult to see the policy subserved by such a doctrine. It is submitted that to allow a recovery is to indirectly enforce the contract and encourage the performance of an illegal act except in those cases where, due to the exceptions of duress and special statutes, the plaintiff could have recovered even if the contract was executed. For in all other cases the defendant, threatened by a suit, will naturally perform his contract, thus secure the profits for which he contracted and place himself in a position where the plaintiff cannot disturb him; whereas if the general rule is followed, there would be no encouragement to the defendant to perform and the natural result would be to lessen the number of such contracts and make contracting parties more careful. The argument often employed that the plaintiff's action is based not upon an affirmance but a disaffirmance of the contract, that the courts by treating the contract as a nullity and therefore the amount sued for as justly due to the plaintiff when he has repented seems far too technical upon which to ground any action based purely on public policy. The result of the decided cases shows that where there is opppression or special statutes the fact that the contract is executed is not decisive, and that where the contract is performed only on the plaintiff's side the fact of *par delictum* is not decisive.

Having considered the applications of the general rule, there is left the point as to the degree of connection between the illegality and the contract. It is evident that if the illegality is involved in a condition or engagement of a contract the parties are *in pari delicto*. *Faikney* v. *Reynolds* (1767) 4 Burr. 2069; *Armstrong* v. *Toler* (1826) 11 Wheat. 258; *Phalen* v. *Clark* (1849) 19 Conn. 421. It would seem that the same results should be reached where the illegality forms the inducement or object of entering into a contract otherwise valid. *Armstrong* v. *Toler*, supra; *Phalen* v. *Clark*, supra; cf. *Bateman* v. *Fargason* (1880) 4 Fed. 32. It would seem immaterial that there has been illegality between the parties in a prior, subsequent, or purely collateral agreement or transaction. *Tracy* v. *Talmage*, supra; *Hodgson* v. *Temple* (1813) 5 Taunt. 181; cf. *Laughton* v. *Hughes* (1813) 1 H. & S. 593. These principles seem to justify those decisions which hold that mere knowledge by a dealer that goods he sells are to be put to an illegal use does not bar him from recovering their price; *Tracy* v. *Talmage*, supra; *Hodgson* v. *Temple*, supra; but if he aids directly in the illegal act or sells them with the purpose that they shall be illegally used he will be barred. *Tracy* v. *Talmage*, supra; *Armstrong* v. *Toler*, supra.

Since the doctrine of *par delictum* is founded on public policy it is evident that if it is to the direct and material interest of the public that the plaintiff should recover not only are his technical rights immaterial but also his rights measured by the ordinary rules of *par delictum* between private individuals. *DeGroot* v. *Van Duzer* (1830) 20 Wend. 390; *St. John* v. *St. John* (1805) 11 Ves. 536; *O'Conner* v. *Ward* (1883) 16 Miss. 1025; *Ford* v. *Harrington*, 16 N. Y. 285. This is illustrated by a late case in Mississippi, *Noxubee Co.* v. *The City of Macon* (1907) 43 So. 304, where the plaintiff, a city alderman, sought to enjoin the performance of a contract between the city and another alderman as being prohibited by the state constitution. The court overruling the objection made by the defendant that the plaintiff himself had engaged in a similar transaction, granted the relief. The decision was proper either on the ground that the public interest was directly involved or that the alleged illegality of the plaintiff was collateral. Ultra vires contracts and contracts involving property interests have not been treated here as the rules of policy governing them stand upon a different basis and involve different considerations. See 7 COLUMBIA LAW REVIEW, 196.

QUASI-CONTRACTUAL RIGHTS OF A DEFAULTER UNDER AN EXPRESS CONTRACT.—Three distinct exceptions are now said to be recognized, see 2 Sedgwick, Damages §§ 654 to 663, to the strict rule laid down in early English cases that a quasi-contract will not be raised where an express contract exists between the parties as to the same subject matter. *Cutter* v. *Powell* (1795) 6 T. R. 320; *Hulle* v. *Heightman* (1802) 2 East 145; *Sinclair* v. *Bowles* (1829) 9 B. & C. 92. The first exception is said to arise where the defendant has knowingly accepted something tendered under the contract, but which in fact was different from that which was contracted for; *Dermott* v. *Jones* (1859) 23 How. 220; the second, where the defendant has committed a breach going to the essence, and the plaintiff has, therefore, elected not to continue performance; *Clark* v. *Mayor* (1850)